



State of Wisconsin

Livestock Facility Siting Review Board

Meeting Minutes

Livestock Facility Siting Review Board Meeting
State of Wisconsin

10:00 AM

January 5, 2018

Department of Agriculture, Trade and Consumer Protection (DATCP)
Board Room
2811 Agriculture Drive
Madison, WI

CALL TO ORDER— Bob Topel, LFSRB Chair

The meeting was called to order by Chairman Bob Topel at 10:00 a.m. Topel, Raymond Diederich, Lee Engelbrecht, Dr. Jerome Gaska, Scott Sand, Bob Selk, and Scott Godfrey were in attendance. Others present included Cheryl Daniels (LFSRB Attorney), and DATCP Division of Agricultural Resource Management employees Richard Castelnuovo, Chris Clayton, and Pat Schultz.

Daniels confirmed that the meeting was publicly noticed as required.

Daniels called roll, confirming that all LFSRB members were present.

Engelbrecht moved to approve the agenda as presented, Gaska seconded, and the motion carried.

Selk moved to approve the November 10, 2017 minutes as prepared, Diederich seconded, and the motion carried.

Glenner v. Walworth County, and Friemoth v. Walworth County, Docket No. 17-LFSRB-02 – Cheryl Daniels, Board Attorney

Daniels provided background information on the appeals. In this case, two different aggrieved parties submitted requests for review: the neighbors (Glenner) of the livestock facility by their attorney, and the operator of the livestock facility (Friemoth).

The LFSRB first addressed the following issues raised by the Glenner appeal including those specifically asserted by the aggrieved party in their request for review:

1. The request for review challenged the procedures followed by Walworth County, the decision-making authority, in determining the completeness of the livestock siting application submitted by Friemoth. The LFSRB considered the following:
 - a. A report by the Glenner's engineer that claims that the application was incomplete because the maps submitted as part of the application omitted required details. The LFSRB noted:

- i. The county had the opportunity to request revised maps, including more information, as part of the completeness determination and application amendment process.
 - ii. The record did not show that the omission of map details was sufficiently significant to affect a determination of compliance with ATCP 51 standards.
 - b. The county staff report prepared prior to the public hearing in August indicated that the application was determined to be complete. The LFSRB noted that because there is no findings of fact issued as part of the decision, there is a lack of evidence in the record to scrutinize the county's completeness determination.
 - c. Following the completeness determination, the county has 90 days to grant or deny the application. Amendments to a complete application are allowed to correct errors found during the process. In this regard, the LFSRB noted:
 - i. The county adhered to the application requirements in ATCP 51.30, in addition to the county's public hearing requirements.
 - ii. The public hearing process highlighted errors in the application, resulting in an amended application.
 - d. The LFSRB has authority under Wis. Stat. § [93.90\(5\)](#) to review a final decision by a local government to approve or deny a siting application, and not to review whether an application is complete.
2. The request for review contended that Walworth County issued the final decision without including the findings of fact. The LFSRB considered the following:
 - a. There was nothing in the county's record to show findings of fact related to the final decision. The LFSRB noted that:
 - i. The siting law and the county's ordinance require the county to issue findings of fact in its final decision.
 - ii. The findings of fact are critical to the Board's review of the record and the determination of issues presented on appeal.
3. The request for review contended that there was evidence in the record, including the amended siting application, to support a determination that the facility did not comply with the odor management standard. The LFSRB considered the following:
 - a. Amendments to a complete application are allowed to correct errors found during the county's decision-making process. The LFSRB noted:
 - i. That the public hearing process highlighted errors in Worksheet 2 of the application, resulting in an amended Worksheet 2.
 - ii. That the amended Worksheet 2 accounted for an existing animal lot and reflected changes made to the proposed size of the lot in the amended application.
 - b. Although the completion of the odor score (application Worksheet 2) was voluntary, the applicant did choose to submit Worksheet 2 to the county. As a result, the applicant assumed an enforceable commitment to comply with the odor standard in ATCP 51, including implementing an odor control practice related to the facility's manure storage structure.
 - c. Oral testimony given by the applicant and included in the county's record called into question the operator's commitment to implement the odor control practice included on Worksheet 2.

- d. The county took into account the oral testimony and issued the permit. Absent the findings of fact, the Board did not know how the county viewed this particular issue in its final decision.
 - e. The county should resolve questions about the operator's commitment to comply with the odor worksheet, and require that the applicant submit modifications to Worksheet 2 if needed.
4. The request for review contended that there was evidence in the record, including the amended siting application, to support a determination that the facility did not comply with the runoff management standard. The LFSRB considered the following:
- a. Amendments to a complete application are allowed to correct errors found during the county's decision-making process.
 - b. During the decision-making process, the applicant changed the size of one animal lot triggering a need to reanalyze the lot using the BARNY model. The LFSRB noted that:
 - i. No amended BARNY output was included in the record to reflect the change in the animal lot size.
 - ii. The record included different maps of the facility indicating both a buffer and no buffer would be built at the end of the animal lot.
 - iii. Although the application should amend itself because of the county's work, the work was not included in the record. As with all issues on appeal, the Board can only review the information in the record.
 - c. During the public hearing, an engineer hired by the Glenner contended that an existing feed storage structure was not evaluated for compliance with the runoff management standard in ATCP 51.20 (3) (b). The LFSRB noted that:
 - i. The particular standard in question applies to feed storage structures that hold high moisture feed (70% or greater) and are one acre or more in size.
 - ii. The applicant's engineer noted the paved bunker area covers less than one acre, and there was no evidence in the record to contradict the size description.
 - iii. The applicant's engineer certified on Worksheet 5 of the application that the standard in ATCP 51.20 was met.

The LFSRB addressed the following issues raised by the Friemoth appeal including those specifically asserted by the aggrieved party in their request for review:

1. The request for review contended that Walworth County exceeded its authority under the siting law by imposing conditions on the final decision approving the application for a siting permit. The request for review identified concerns with conditions nos. 1, 2, 7, and 12, and did not address the remaining 11 conditions in the permit. The LFSRB considered the following:
- a. The siting permit cannot be conditioned on the timing of transporting animal waste on roadways (Condition #2). Applying a local standard that restricts the hours of transporting animal waste on roadways may be valid to protect public health and safety, but the county has not adopted more stringent local standards as part of its livestock facility siting ordinance in accordance with the required criteria in ATCP 51.10 (3).
 - b. The siting permit cannot be conditioned on requiring manure storage or restricting when a manure storage structure is emptied (Condition #7).
 - c. The siting permit cannot be conditioned on requiring a livestock facility operator to clean tracked soil or manure off of Town or County roadways (Condition #12).

- d. Evidence in the record indicated that the county and applicant may have voluntarily agreed to an alternate wording of Condition #12. The Board noted that voluntary conditions are acceptable and should be encouraged, but the siting law does not provide authority to place voluntary standards on top of the standards in ATCP 51. A local government would have to secure compliance with a voluntary standard through means other than the livestock facility siting ordinance.
- e. During past reviews, the Board has addressed issues, including conditions, not raised by the parties in an appeal. In this regard, the Board considered the following:
 - i. Condition #14 includes a need for further Town committee approval, indicating that the county's approval of siting permits is conditioned on Town approval (in this case, the Town of Lafayette).
 - ii. The county should review other conditions in the permit (including requirements for the livestock facility to be in compliance with all applicable permits) to determine if these requirements are related to state standards authorized by ATCP 51 or local standards adopted in the county's ordinance in accordance with ATCP 51.10 (3).

The Board reached the following conclusions, which were recited by Daniels:

- As required by the livestock siting law, Wis. Stat. § 93.90 (4) (c), findings of fact must be included in a county's decision to approve a conditional use permit for livestock facilities.
- Walworth County did not meet the requirements in ATCP 51.20 (2) by not requiring an amended BARNY model output to reflect changes made to the proposed size of an existing animal lot in the amended application. The application upon which the county based its decision must be complete and reflect the proposed facility that will be permitted. The LFSRB recommends that Walworth County address this issue.
- All worksheets in the siting application need to reflect what the applicant commits to implement at the facility. The commitment made in the application, Worksheet 2, to implement an odor reduction practice may conflict with oral testimony given by the applicant. The LFSRB recommends that Walworth County resolve questions about commitments given by the applicant.
- As to the question regarding the feed storage structure, the LFSRB finds no evidence in the record to demonstrate that the structure failed to comply. The Board considered the presumption of compliance that attaches upon a local government's determination that an application is complete. Accordingly, the challenge on this issue fails.
- To address the contention that the application was incomplete, the LFSRB concludes that amending an application that was determined complete to address issues that arose during the public process is proper.
- The statements of position submitted to the LFSRB generally addressed issues the Board has no authority to review and decide on.

- As to the fifteen additional conditions attached to the siting permit (pages 92 to 95 in the record):
 - Condition 2, stating “Hours shall be 24 hours per day. No transport of animal waste on the roadways shall occur between 6:00 p.m. and 6:00 a.m.”, cannot stand as the county exceeded its authority under the siting law to create an additional standard.
 - Condition 7, stating “The applicant must provide adequate manure storage. Storage shall be available for at least 4 months on site...The storage facilities must be emptied within two weeks of any time that spreading begins...”, cannot stand as the county exceeded its authority under the siting law to create an additional standard.
 - Condition 12, stating “The applicant will be responsible for cleaning tracked soil or manure resulting from the farm operations off the Township or County Roadways on a daily basis”, cannot stand as the county exceeded its authority under the siting law to create an additional standard.
 - The LFSRB recommends that Walworth County review the validity of the other permit conditions to establish whether they may be attached to the permit consistent with Wis. Stat. § 93.90. The county may also review whether conditions can be applied through other zoning permits.

The LFSRB members voted to affirm their conclusions and direct LFSRB Attorney Daniels to memorialize them in a draft final decision to remand the siting permit. Diederich moved to approve the summary of conclusions as recited by Daniels and send the permit back to the county for the purpose of acting in accordance with the LFSRB’s conclusions; Engelbrecht seconded, and the motion carried.

SET DATE FOR TELEPHONIC BOARD MEETING TO REVIEW DRAFT AND VOTE ON FINAL DECISION – Cheryl Daniels, Board Attorney

The Board agreed to convene a conference by phone on Thursday, January 25, 2018, at noon to review the draft decision and vote on a final decision.

ADJOURN

Diederich moved to adjourn the meeting, Gaska seconded, and the meeting was adjourned at 2:04p.m.

Bob Selk, Secretary

Date

Recorder: CC